

INHERITANCE PATTERNS

428

Philippine inheritance law is based on the principle of equal distribution among heirs. The Philippine Civil Code, approved in 1949, provides that in every inheritance the relative nearest in degree excludes the more distant relatives. Relatives in the same degree are to inherit in equal share. The Spanish Civil Code was made effective in the Philippines in 1889. Other Spanish laws were extended to the islands during the Spanish regime. During the American period laws of Anglo-American origin were enacted; the present revised Philippine Civil Code is a composite of laws of Spanish and American origin. The patterns of inheritance in Caticugan reflect this aspect of the legal system.

In Caticugan usufruct commonly applies to both immovable (real estate) and movable properties. When a husband (wife) dies, the fields of the deceased are usually held in usufruct by the surviving spouse until death. Often the survivor will retain the deceased mate's property, not dividing it among their children until they are married or she (he) dies. If the marriage was without issue the property is divided equally among the deceased's brothers and sisters, usually after the death of the surviving mate. If no siblings survive the property is inherited equally by the deceased's nieces and nephews. If there are no nieces and nephews then the property of the deceased reverts to first

cousins (the children of their parent's brothers and sisters). Normally one's parents, being one generation older, predecease their children. If a man (woman) dies and there are no heirs except first cousins, the property is inherited by paternal first cousins only, or in the case of a woman, by maternal first cousins.

This pattern of inheritance is largely pre-Hispanic. Loarca wrote that if a man died and left four children, his property (including slaves) was divided equally among his children. If he left a bastard the child would receive only what the brothers wished to give him. Robertson, who had examined such old Spanish sources as Morga, Plasencia and Colin, states that illegitimate children did not inherit, even those of the chiefs. "In general children inherited equally any property left by their parents, unless either parent desired to show some slight partiality by a small gift."⁹ Among the Tagalogs conjugal property was divided equally among the heirs of the husband and wife but unmarried women could not own property in their own right.

If the man had no children, according to Loarca, his property reverted to his brothers in equal shares. If there were no children or brothers the man's property

⁹James A. Robertson, "The Social Structure of, and Ideas of Law Among, Early Philippine Peoples; and a Recently-Discovered Pre-Hispanic Criminal Code of the Philippine Islands. H. Morse Stephens and Herbert E. Bolton (ed.) Pacific Ocean in History: Papers and addresses presented at the Panama-Pacific Congress held at San Francisco, Berkeley, and Palo Alto, July 19-23, 1915. New York, Macmillan Company, 1917, pp. 172-4.

428

was inherited by his cousins german (primos hermanos, i.e., first cousins). If there were no first cousins his property was inherited by his nearest kinsmen in equal shares.¹⁰ This account of inheritance rights is identical with rights demanded by heirs in Caticuan today with some exceptions. First, Loarca omits the inheritance rights of nieces and nephews that precede the rights of first cousins. Second, the omission of equal inheritance rights of brothers and sisters. Third, unmarried women today may own property under their own names. Fourth, the rights of illegitimate children have been augmented.

When the husband (wife) dies without issue the surviving mate often enjoys usufruct of the property until her (his) death when the property reverts to the other legal heirs. However, in some cases the survivor is denied usufruct of a deceased mate's property. One childless woman, after the death of her husband, finally gave up her dead mate's fields in Caticuan because her husband's brothers and sisters were constantly annoying her by demanding their brother's land. In another incident the deceased husband's dead brother's children demanded that the widow turn over the land of their

¹⁰Loarca, op. cit., Blair and Robertson, The Philippine Islands, 1493-1898, V, p. 153. Loarca states that most Visayans believed it was disgraceful to have many children because on their parents' death their property would be divided among so many heirs that all would be poor. Ibid., p. 119.

paternal uncle. She took the quarrel to Siaton municipio and the chief of police advised her to retain the land during her lifetime. One informant's brother's wife died and her husband retained his deceased mate's fields in Datag. A Dumaguete lawyer informed the husband, however, that he could enjoy usufruct of the land only until his death. Then his wife's property would go to her brothers and sisters since she had no children. There were several cases in which heirs took to court in Siaton the attempt of a childless remarried sister- or brother-in-law to sell a deceased mate's property—an illegal procedure.

Legitimate and Illegitimate Children as Heirs

The Philippine Civil Code of 1949 states that legitimate children and their descendants succeed to the parents and other ascendants, without distinction as to sex or age, even if they were derived from different marriages.¹¹ This Code was revised recently (1951); illegitimate children are now legally entitled to an equal share in a parent's property. However, before this revision in Caticugan the illegitimate children of fathers rarely inherited unless "they served their fathers," i.e., helped him with his work, cared for him

¹¹Robert S. Hardie, Philippine Land Tenure Reform: Analysis and Recommendations. Manila, Special Technical and Economic Mission, Mutual Security Agency, 1952, p. 67.

during sickness, etc. On the other hand, children born out of wedlock always received the same share of their mother's properties as her legitimate children.

428
848

Some barrio folk in Caticugan explained that a mother's illegitimate child is always her child regardless of the circumstances of its birth whereas a father can always deny the child is his. Illegitimate children are normally raised by the mother; the bonds of affection and devotion are closer for the mother than the father. In Siaton poblacion I know of one unmarried woman, who purposely had a liaison with another man in order to have a child to care for her during her old age.

An illegitimate boy and girl lived in Barrio Caticugan with their deceased mother's two spinster sisters; their father resided a dozen houses away. Since they were not "serving" ~~their~~ unmarried father, on his death his property was to be inherited by his brothers and sisters. Another old man (an illegitimate child himself) died in Barrio Caticugan during my residence. On his death-bed he told his eldest son to see that his "pet" (favorite) illegitimate daughter, who lived with her unmarried mother in Siaton poblacion, inherited some of his land when his son died. Most barrio folk doubted that the son would remember his father's wish for he had several children. Sometimes it was reported that "a father may

take pity on his illegitimate children" and leave them some of his property. Yet they rarely, if ever, received an equal share with other heirs.

There are a number of hazards for a father who wishes to leave his property to an illegitimate child. A man in Barrio Caticugan gave his illegitimate son (who, by the way, had not "served" him) a parcel of land. When he died the brother and sister who had cared for him during his last sickness took the land away from the illegitimate son. The son brought the dispute to Siaton municipio; since he had no legal documents to show that the land was given him it reverted to his father's brothers and sisters.

Another case of a property dispute involving illegitimate children was brought to the municipio from Barrio Canaway. A man and woman living as common-law husband and wife had a son and daughter. Later they separated and never were reconciled. On the man's death his brother and sister sold his land but refused to share the money with his two illegitimate children. The children presented their case in the Siaton court; the judge ruled against them since they were illegitimate children and the father had died before Philippine Civil Code revision.

Adopted Children as Heirs

Children are rarely adopted by married couples who have children; when they are adopted they usually do not inherit under any circumstances (unless nieces or nephews) and never inherit equally with their parents' siblings. In Caticugan children are adopted by childless couples or unmarried adults. Exceptions are when one's brother's or sister's children become orphans or their parents are unable to support them. A brother or sister may then raise a niece or nephew who usually receive no share in their foster parents' property since the uterine children are the heirs.

Adoption in Caticugan is never legal in the sense that it is arranged through the courts. In Siaton poblacion only one case was reported where a childless couple legally adopted the wife's first cousin as their son. This couple also made a will leaving all their property to the adopted son. Thus adopted children are sometimes deprived of the property their foster parents may wish to leave them. For example, an adopted son of a barrio family was given a parcel of land by his foster father before his death. After the father died his children repossessed the land from the adopted son. He brought the dispute to the local court but lost his case because he could not produce legal evidence of adoption. On the other hand, there are incidents where foster parents left land to their adopted children and the uterine children respected the wishes of their deceased parents.

428
597

Unmarried individuals or childless couples who adopt children have considerable difficulty in leaving property to them. One fairly common method was resorted to by a woman in Naga whose adopted son (her FaSiDaSo) was deeded his foster mother's property without any payment. The woman had raised the boy from infancy and wanted him to have her land but her brother and sister had protested. They had told friends that after their sister's death they would take away the land given the adopted son.

In Siaton poblacion one childless couple adopted the illegitimate child of their maid (the actual father was alleged to be the foster father's maternal uncle) and registered the child's birth in the municipio as their uterine daughter. The couple also deeded all their property to their adopted daughter, an arrangement that their brothers and sisters strongly disapproved. Often deeding land to adopted children is kept secret by foster parents "otherwise other relatives will always be pestering you not to leave your land to adopted children." Some barriofolk stated that foster parents would often like to leave property to adopted children but hesitate because they do not wish to start a quarrel among their relatives.

In a barrio near Caticugan a couple with children adopted the husband's brother's daughter. On their death, the uterine children did not give any of their parent's property to their adopted sister (i.e., first

cousin). She complained that she had faithfully served and cared for her foster parents (her paternal uncle and aunt). If she had been a servant her "bill" would have been larger than the value of the land she requested. However, the children countered that this was her duty for her foster parents had fed and clothed her since infancy.

In Barrio Caticugan one informant's father had been adopted by his grandmother (his FaFaSi). On her death bed the woman requested that all her property be inherited by her adopted grandson (her BrSoSo), and urged that there be no dispute after her death. It was so done. When the same informant's second wife died, after a childless marriage, she made a will leaving all her property to two nieces (the daughters of a sister) she had raised from childhood. The barrio lieutenant (teniente de barrio) and all the women's other nieces and nephews (her brothers and sisters were dead) were called to the dying woman's side, and she explained her wishes. The will was witnessed and signed by the barrio lieutenant and no dispute occurred after her death.

In Naga a couple had adopted a boy unrelated to either the husband or the wife. When I asked if his adopted son would inherit equally with his uterine children, the husband replied: "I suspect my real children will object. But if my adopted son wants to get married, I will pay for all the costs, including the bride-price (batud)."
Adopted children usually receive a share in

428
597

the movable property of their foster parents, particularly the farm animals. The logic is that "they helped care for these animals" and earned their inheritance rights.

428
597

Many barriofolk in Caticugan adopt nieces and nephews. This is understandable since relations with the families of their brothers and sisters are very close under usual circumstances. If a childless couple adopts a niece or nephew their property would be inherited by legal heirs since on their death their lands would normally go to their nieces' and nephews' parents. However, non-related or godchildren are sometimes adopted. One woman's goddaughter's mother died "before the baby was finished with the nipple." The child was adopted and raised by her childless godmother. "She had no children so she made a will [in order that the adopted girl would inherit her property] so her nieces and nephews would not molest her adopted daughter."

Wills are rarely made in Caticugan or Siaton poblacion. The barriofolk state that "only educated people in the poblacion make wills." One old informant said "if parents made a will in the old days [that would probably be due to their desire to leave their property to others than the natural heirs] they would just be looking for trouble." Wills were made by Filipinos during pre-Hispanic times. Robertson writes that oral and written wills made were carried out strictly and never contested.

428

Conjugal Property

428 •
Conjugal property (magtini-ayonan or tini-ayonan for short), includes real estate or movable properties acquired by a married couple during their wedded life. If the couple is childless, conjugal properties revert to their brothers and sisters, half going to heirs of the husband and half to heirs of the wife. The mother's illegitimate and legitimate children share equally in her conjugal properties. The father's illegitimate children did not share in his conjugal properties unless legal arrangements were made until the revision of the Philippine Civil Code. Adopted children normally do not inherit conjugal property of their foster parents unless they make special arrangements. If there are no heirs except the couple's ~~first~~ first cousins both the paternal and maternal cousins inherit conjugal properties. One-half of the conjugal property is divided equally among the paternal and one-half among the maternal cousins.

However, conjugal properties are rare in Caticuan and not very common in Siaton poblacion. For the mds' part, each mate brings to the marriage certain properties and during their lifetime little is added to their meager possessions, particularly real estate.

Temporary Division of Property

According to Gadiane:

During the Spanish period the father was the head of the family. When the children were all married, the father, sometimes attended by poblacion officials, divided his property equally among his children--

land, animals, plants such as bamboo, coconut and huri palms, etc. Sometimes the father or mother selected one of their children to live with them and to take care of them when they got sick during their old age. When the father or mother was about to die, they called the poblacion officials to have them as witnesses that the son or daughter who stayed and took care of them would receive the rest of their properties. Sons and daughters in these times never went against the will of their parents.

428

This procedure--calling in poblacion officials as witnesses--was probably more typical of poblacion residents than the barriofolk.

Parents, before their death, often temporarily partition lands among their children. This division may be made upon the children's request, particularly after they are married. Married brothers or sisters with children are often permitted to farm a larger field than childless or unmarried brothers and sisters, because the married couple "have more mouths to feed." This arrangement also minimizes quarrels among the children after their parents' death, according to the barriofolk. Yet these temporary partitions of land are often a source of conflict. Siblings who receive a larger parcel of land do not wish to have it reduced so their brothers and sisters will share equally.

428
578

While legally, and in most cases actually, property is equally distributed among the children, there is a tendency for the eldest sibling to try to get the "lion's share." A lawyer in Tanjay said that most of his civil cases result from the efforts of eldest siblings to get

or retain more than an equal share of their parents' property. One incident was said to have occurred in Barrio Datag when a younger brother poisoned his elder brother with botete fish because the latter refused to repartition equally their father's land after his death. The elder brother had been given temporarily a larger field than his brother by their father.

428
578

Again two brothers fought with bolos over a supposedly unequal division of their parents' property in Barrio Canaway. Several disputes over equal inheritance among brothers and sisters were brought to Siaton municipio and others were settled informally in the barrios. Elder siblings often have the advantage over younger brothers and sisters since they are usually married with children. As heads of the family they can wield considerable influence in such matters.

Another reason why land is usually not permanently divided among their children before the parents' death is that the hatud (bride-price) is normally paid by the son's parents, although he may contribute part of it.¹² If one's parents' property is permanently divided before all sons are married, then the unmarried sons would have to furnish their bride-price without aid from their

428
584

¹² The hatud is not a payment to acquire a wife as property of her husband or his family. In most cases the payment is small and the money, animals, and food furnished by the groom's family are used by his bride's family in entertaining guests after the wedding. In some cases, however, the hatud is so large that a sizable profit is made by the girl's family.

parents' estate. The eldest son of one family whose parents were dead, when questioned why he had not divided their property among his younger siblings, replied:

At present I cannot agree to the division of our parents' property for the reason that most of us are still unmarried and our youngest sister is still in school. She is not eighteen yet. The money spent by my parents to marry my brothers and sisters was taken from the income of our parents' property.

The eldest son and one of his younger brothers were bachelors.

One mother's children were urging her to press for division of her deceased parents' property, that was being farmed by her eldest brother. This arrangement had been in force for many years. While the brother gave each of the heirs a share of the harvest, his nieces and nephews believed their mother's share would be larger if they farmed the land. However, the woman was reluctant to demand that her brother divide the land since several children were still unmarried.

In both these cases the individuals farming the fields received one-half of the harvest plus their share of the harvest as heirs. For example, if two of five brothers tilled the fields of their dead parents, furnishing the seed and animals, they receive 70 per cent of the harvest; 50 per cent for cultivating the fields and 10 per cent each as two of the five heirs. The land tax is divided equally among all heirs. It is to the

428
584

428
518

disadvantage of such heirs to repartition the fields among their younger brothers and sisters. If they did, they would be unable to work all the fields or receive 50 per cent of the harvest; they would receive only the crops raised on their own fields.

428
578

Another case will illustrate how temporary division of the fields of the deceased (or living parents) in Caticugan caused rancor and dissension among the heirs. One father, while he was alive, divided his land between his two sons. Shortly after his death a flood ruined part of the elder son's field near the Mantuyop River. The division had been acceptable to both sons until the flood. After the flood the elder son demanded repartition of the land, arguing his field now was less valuable than that farmed by his younger brother. This quarrel smouldered during my entire residence.

When parents become very old they often live with married children. Sometimes the children are given permission to farm their parents' fields but the latter continue to share in the harvest; the children are their parents' tenants. An old woman in Caticugan had divided her land between her daughter and spinster sister. She still received part of the harvest each year from her field that was cultivated by her son-in-law. It was understood that on her spinster sister's death the latter's property would revert to her niece (i.e., daughter of her elder sister). Other elderly persons retain part

888
428

of their land as insurance against old age and sickness. They state that this property will be given to those who care for them during their last days--usually their children.

428
888

Permanent Division of Property

The permanent division of property is usually made after the deceased parent's hobkas. A hobkas is a memorial service on the first anniversary of an adult's death that normally consists of a novena (prayers at the family altar for nine consecutive evenings) and maybe a memorial mass in the poblacion church. The tenth day of the novena a feast is held in honor of the deceased person. The hobkas costs money; a pig or goat must be slaughtered, food and drink purchased, and if a memorial mass is held a payment is made to the church. These expenses are deducted from the deceased's property before the permanent division is made. If the property were permanently divided before the hobkas, disputes might arise over sharing the cost of the memorial service.

428
765

Sometimes the permanent division of one's property is made after the kaliwasan, the tenth day after the deceased's funeral. (A kaliwasan is a novena that begins the day of one's death with a feast on the tenth day.) The kaliwasan is another expense connected with death in the barrio and the cost is deducted from the deceased's property. In one case in Caticugan a woman's property was permanently divided after her kaliwasan but her heirs

set aside a cow for the hobkas to be held on the first anniversary of her death.

The temporary partition of one's fields in Caticuan is often the same as the permanent division. For example, one informant said that just before his father's death he told his children to transfer his land titles to their names. It was agreed among the children that the fields they were then farming were their fair shares, and the records were changed a few days before the father's death. This was an obvious and a successful attempt on the father's part to prevent disputes after his death.

Permanent division of properties is normally accomplished at a meeting of the heirs. They hold a conference and agree upon the division. This is where the eldest sibling, as head of the family, may attempt to obtain more than an equal share. For example, in 1951 one case in the Siaton municipio court concerned the efforts of an elder brother to retain his mother's property. When the father died, the elder son managed the family fish corrals. "During the Japanese occupation their bongods [fish corrals] sold P15,000 [\$7,500] of fish in emergency notes. The eldest son was the right hand of his mother and took charge of this money." According to local informants, on his mother's death the elder son refused to share the bongod profits with his younger siblings because "his mother was indebted to him." He also claimed that all of his mother's land belonged to him for he had

428
765
428

loaned her the money to purchase the fields. No decision had been reached on this case during my residence.

428

If some heirs are too young to farm the land they inherit, an elder sibling or relative may cultivate the fields until the heirs marry or are capable of tilling the land. Conflicts sometimes occur from these arrangements. In Barrio Canaway the parents of several small children died; their uncle (FaBr) cared for them and farmed their parents' fields. Later some of the children married and the unmarried children moved from their uncle's house to live with their brothers. They began to farm their parents' fields but the uncle refused to part with two parcels of land. He claimed one field as payment for the care he had given his nieces and nephews, and that the other field had been sold to him by their deceased parents when the children were young. The heirs claimed that their uncle had no legal documents to show for this alleged sale and that his family had lived off the harvests--which was full payment for their care. Their case was informally settled at Siaton municipio, in favor of the children. Often these disputes, when brought to the municipio, are not formally taken to court but are informally settled by the mayor or the chief of police.

428
578

Land records in Siaton municipio usually are not changed when children or relatives inherit property. Sometimes the records remain in the heirs' parents' name "out of respect to their memories." There is also a

423
428

\$2.50 fee connected with such title transfers; this discourages many heirs from making the title changes. Land records in the municipio are usually changed only when the land is sold and the title legally transferred.

The constant subdivision of land in the Philippines among heirs has been condemned as one reason for the small size of farms. The Hardie report recommends that the "inheritance law respecting succession to agricultural properties should be modified" in order to prevent "fragmentation of farm units through succession."¹³ This recommendation would be more appealing if the report had suggested means for achieving such a drastic innovation. If a field is too small to be economically divided among the heirs, Caticugan barriofolk have a number of solutions. First, the land may be sold to another person and the receipts divided equally among all heirs. Second, one heir may purchase the land and the money divided equally among the remaining heirs. Third, fields may be rotated among the heirs. For example, four brothers in Naga inherited a small field from their father. Instead of dividing or selling the field one brother tills the land each year and receives all the harvest. The next year another brother farms the land and so forth until each has had his turn.

In Barrio Caticugan there were individual paddies that were owned by as many as ten heirs. In Naga eight

¹³Hardie, op. cit., p. x. Vide Pelzer, op. cit., p. 11.

428
423

311
423
423
241

siblings owned one cornfield while seven owned still another field. It is for such reasons that the municipio land records do not accurately reflect the actual division of agricultural land in Caticugan. Usually such fields are listed under the names of parents or grandparents of the cultivators. Sometimes the land record merely states "Juan Cruz and heirs"; such fields are normally farmed under the arrangement described in the section on temporary division of fields. (See Pages 467-472.)

Fields are rotated sometimes while the actual owner is alive. In Barrio Caticugan a nephew was farming a small field owned by his childless aunt; he had agreed to work the field one year and the following year it would revert to his aunt. At the end of each harvest, however, the nephew made various excuses for breaking the agreement--"I shall work the field next year because this year's harvest was poor." His aunt never filed a formal complaint in Siaton municipio "because it is a small field and I do not want any trouble."

Movable Property

Animals may be rotated among the heirs like the fields. If there are three heirs and only one carabao, the animal may be sold to a stranger or to one of the heirs, and proceeds divided equally among all of them. An heir may keep a male carabao for one year, then pass the animal along to the other heirs; the carabao is

428
311
423
241

428

rotated in this manner until it is too old to work or dies. If the animal is killed the meat is divided equally among the heirs. In the case of a female carabao one heir may retain the animal until a calf is born and weaned; then the carabao is rotated to another heir. Such carabaos, like the fields, are actually joint property; no heir can sell the animal or the field without the permission of the group.

In regard to houses, farm equipment, looms, jewelry, clothing, utensils and other personal possessions there is no clear-cut pattern of inheritance based on sex. Persons may give their personal belongings to a non-relative if that individual cared for them during a period of prolonged illness prior to their death. Movable property is usually divided according to the mutual agreement of the heirs. A daughter may wish to obtain her father's plow for her husband or a son his mother's loom for his wife. One man said his plow would go to his son because his daughter was married, her husband had a plow and they lived in a distant barrio.

The parents' house is said sometimes to go to the youngest child since often he or she is living with the parents when they die. The older children are married and have their own homes. However, one informant said the house of one's parents goes to the eldest son; he cited himself as an example. Some barrio folk report that the house may be dismantled and the timbers and posts divided among the various heirs. This latter procedure is very

rare. In fact, the only example that could be cited was when Lucas Ege died, his large dwelling in the poblacion was torn down and the timber and posts were distributed among his heirs. The average house in Caticugan would hardly be worth the trouble of disassembling it. 428

The customs of Caticugan illustrate the central concept of Philippine inheritance law--equal distribution among the heirs. Also illustrated are the complexities of the system as practiced in Caticugan. Some siblings attempt to inherit more than a rightful share; there occur devious arrangements to disinherit legal heirs, secret agreements, delayed division of property, inaccurate land records, and other methods of transferring property on death without legal safeguards. Under such conditions it is not surprising to find that much tension and conflict in the barrio center around land, usually involving both consanguine and affinal relatives.

TYPES OF LAND DISPUTES

Nearly 20 per cent (sixteen cases) of eighty-four civil and criminal suits analysed from the available court records of Siaton municipio resulted from illegal cultivation of another's land, boundary disputes, or attempts to obtain more than one's rightful inheritance.¹⁴ The chief 423 578 685

¹⁴ A court of the First Instance is located in Siaton poblacion; each month, on certain days, a judge comes to the municipio to reside over the court. There is a judge in residence in Tolong poblacion who hears cases for this municipality and Sta. Catalina.